

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

A. STEIN WESTERN HEMISPHERE
TRADE CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2113

Decision No. CU 5405

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by A. STEIN WESTERN HEMISPHERE TRADE CORPORATION in the amount of \$1,348.05 based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of the claimant corporation has certified that the claimant was organized in Illinois and that at all pertinent times more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. This officer also certified that prior to November 18, 1960 claimant was a wholly owned subsidiary of A. Stein and Company, an Illinois corporation, which merged into a wholly owned subsidiary of Kayser-Roth Corporation (Claim No. CU-2111) effective November 18, 1960; and that as of December 15, 1960 only 21 stock holders owning less than 1.1% of Kayser-Roth Corporation were residents of foreign countries and presumed not to be nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copies of claimant's ledger accounts and a bank draft acknowledgement reflecting the sale of goods by claimant to Cuban consignees as follows:

<u>Consignee</u>	<u>Date Due</u>	<u>Amount</u>
Dominguez Y Cia.	December 4, 1959	\$ 219.50
Grabiel Si Sto y Cia.	October 9, 1960	822.04
Demetrio Brisset	August 16, 1960	<u>306.51</u>
		\$1,348.05

CU-2113

Claimant states that it has not received the funds due it or which had been paid for its account to a local bank and not transmitted to it. It also appears that claimant has asserted and the Internal Revenue Service has allowed an income tax deduction for said loss.

The Government of Cuba, on September 29, 1959, publishes its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, in the instant claim, the Commission finds that the aforesaid sums totalling \$1,348.05 were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, such losses occurred on the respective maturity dates with regard to unpaid drafts maturing after September 29, 1959. The Commission further finds that in those instances in which payments were made to the

Cuban banks, where ascertained, or the days after notification of payments were made to claimant corporation.

Therefore, in the instant claim the Commission finds that claimant's property was lost as a result of intervention of the Government of Cuba and that the losses occurred on December 4, 1959 as to \$219.50, on October 9, 1960 as to \$822.04, and August 17, 1960 as to \$306.51.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
December 4, 1959	\$ 219.50
October 9, 1960	822.04
August 17, 1960	<u>306.51</u>
	\$1,348.05

CU-2113

CERTIFICATION OF LOSS

The Commission certifies that A. STEIN WESTERN HEMISPHERE TRADE CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Thousand Three Hundred Forty-eight Dollars and Five Cents (\$1,348.05) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

JUL 29 1970


L. S. Carlisle, Chairman


Theodore Jaffe, Commissioner


Sidney Friedman, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

CU-2113